

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**FILED**

**AUG 24 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NADA RAAD,**

Plaintiff - Appellant,

v.

**FAIRBANKS NORTH STAR  
BOROUGH, SCHOOL DISTRICT,**

Defendant - Appellee.

No. 04-35447

D.C. No. CV-97-00068-F-RRB

**MEMORANDUM\***

**NADA RAAD,**

Plaintiff - Appellant,

v.

**FAIRBANKS NORTH STAR  
BOROUGH, SCHOOL DISTRICT,**

Defendant - Appellee.

No. 04-35624

D.C. No. CV-97-00068-F-RRB

**NADA RAAD,**

Plaintiff,

No. 04-35990

D.C. No. CV-97-00068-F-RRB

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\*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

v.

**FAIRBANKS NORTH STAR  
BOROUGH, SCHOOL DISTRICT,**

Defendant - Appellee,

**ROBERT A. SPARKS,**

Real-party-in-interest -  
Appellant.

Appeal from the United States District Court  
for the District of Alaska  
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted July 24, 2006  
Anchorage, Alaska

Before: **KOZINSKI, BERZON and TALLMAN**, Circuit Judges.

1. Because Raad failed to comply with Federal Rule of Appellate Procedure 10(b)(2) by refusing to provide any part of the trial transcript, we cannot evaluate her sufficiency of evidence claim, and thus dismiss it. See Syncom Capital Corp. v. Wade, 924 F.2d 167, 169 (9th Cir. 1991) (per curiam).

2. Raad contends that the district court erred in not instructing the jury on the McDonnell Douglas burden-shifting framework, but “it is not normally appropriate to introduce the McDonnell Douglas burden-shifting framework to the

jury. At that stage, the framework ‘unnecessarily evades the ultimate question of discrimination vel non.’” Costa v. Desert Palace, Inc., 299 F.3d 838, 855–56 (9th Cir. 2002) (en banc) (quoting U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 714 (1983)), aff’d, 539 U.S. 90 (2003). To the extent we can evaluate this claim without a transcript, nothing in the record suggests that this case is atypical so as to make such an instruction appropriate. Nor do we have any record that Raad objected to the instructions at trial.

**3.** Costs are awarded to the prevailing party in civil actions as a matter of course, unless extraordinary circumstances make the award of costs improper. Fed. R. Civ. P. 54(d)(1); see also Ass’n of Mexican-American Educators v. California, 231 F.3d 572, 591–93 (9th Cir. 2000) (en banc). Raad presents no extraordinary circumstances to merit a departure from the default rule.

**4.** The district court did not abuse its discretion in finding that Sparks recklessly engaged in unreasonable and vexatious litigation tactics, which unduly increased litigation costs for the opposing party. See 28 U.S.C. § 1927; see also Fink v. Gomez, 239 F.3d 989, 993 (9th Cir. 2001) (“[R]ecklessness suffices for § 1927 . . .”). Nor did the district court abuse its discretion as to the amount of sanctions. It imposed far less than the \$55,000 in excess costs alleged.

5. A district court may award attorney's fees to a prevailing Title VII defendant if the plaintiff's "claim was frivolous, unreasonable, or groundless, or [if] the plaintiff continued to litigate after it clearly became so." Christiansburg Garment Co., v. EEOC, 434 U.S. 412, 422 (1978) (interpreting 42 U.S.C. § 2000e-5(k)). We review for abuse of discretion. See Margolis v. Ryan, 140 F.3d 850, 854 (9th Cir. 1998).

This was a long and costly suit. In total, the public school district incurred nearly \$900,000 in attorney's fees. In awarding \$150,000 in partial fees against Raad, the district court found that "[p]laintiff's claims were frivolous and totally lacking any foundation." In a different order, the district court did note that Raad presented one "legitimate jury issue"—namely, "that she was disciplined inordinately because of her race and/or religion after the incident in the superintendent's office." And, by previously reversing summary judgment on two of her claims, we held that Raad had made a prima facie case of discrimination and that genuine issues of fact existed. See Raad v. Fairbanks N. Star Borough Sch. Dist., 323 F.3d 1185, 1198 (9th Cir. 2003).

By ordering far less than the full amount of fees incurred by the school district in this litigation, the district court obviously took into account the portions

of plaintiff's case that were not frivolous. The district judge was intimately familiar with the case and could thus properly apportion the fees incurred by the defendant in responding to the claims that were frivolous. The district court did not abuse its discretion in awarding partial attorney's fees: The award balances the excessive fees that the school district was forced to incur with Raad's ability to pay; it also strikes a reasonable compromise in not chilling plaintiffs from pursuing civil rights claims while still protecting employers and the public from shouldering the excess costs incurred when such plaintiffs continue to litigate claims after it's clear they lack merit.

**DISMISSED** in part and **AFFIRMED** in part.